Nos. 87-1303 and 87-1310

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

ALLEGHENY PITTSBURGH COAL COMPANY,

Petitioner,

v.

COUNTY COMMISSION OF WEBSTER COUNTY, WEST VIRGINIA,

Respondent.

EAST KENTUCKY ENERGY CORPORATION, ONEIDA COAL COMPANY, INC., and SHAMROCK COAL COMPANY, INC.,

Petitioners,

v.

COUNTY COMMISSION OF WEBSTER COUNTY, WEST VIRGINIA,

Respondent.

On Writ Of Certiorari To The Supreme Court of Appeals Of West Virginia

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BRIEF AMICUS CURIAE OF THE INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS IN SUPPORT OF PETITIONERS

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BRIEF AMICUS CURIAE OF THE INTERNATIONAL ASSOCIATION OF ASSESSING OFFICERS IN SUPPORT OF PETITIONERS

INTEREST OF AMICUS CURIAE (AND REPRESENTATION AS TO CONSENT FOR FILING)

Counsel for the International Association of Assessing Officers (IAAO) have received written consent from the counsel for Petitioners in this case to the filing of an amicus brief by IAAO. The written consent from counsel for Petitioners is being forwarded to the Clerk of the Supreme Court with this Brief. Counsel for Respondent in this case has consented to the filing of an amicus brief by IAAO in a telephone conversation with counsel for IAAO. Counsel for Respondent also advised counsel for IAAO that Respondent's written consent to the filing of IAAO's amicus brief would be forwarded to counsel for IAAO for filing with the Clerk of the Supreme Court, but counsel for IAAO have not yet received that written consent.

The International Association of Assessing Officers is a nonprofit educational membership organization dedicated to improving the administration of the property tax and to improving the understanding of important property tax issues. Founded in 1934, the organization has approximately 7,800 members worldwide, who come from governmental, business, and academic communities, including assessment agencies in state and local governments in all fifty states.

The eight objectives of IAAO are stated in the IAAO Constitution, Art. 1, Sec. 2, as follows: (1) to improve the standards of assessment practice; (2) to educate those engaged in assessment practice; (3) to elevate the standards of personnel requirements in assessment offices; (4) to educate the general public in matters relating to assess-

ment practice; (5) to engage in research and to publish the results of studies in assessment administration; (6) to provide a clearinghouse for the collection and distribution of useful information relating to assessment practice; (7) to cooperate with other public and private agencies interested in improving assessment administration; and (8) to promote justice and equity in the distribution of the property tax burden. IAAO speaks here as an organization dedicated to equitable, efficient, and credible property taxation and not as a "trade union" for assessors.

IAAO is concerned about the assessment inequities that would result and the burdens that would be placed upon taxpayers seeking relief from overassessment if the Supreme Court of the United States were to affirm the decision of the court below. In its decision, the Supreme Court of Appeals of West Virginia endorsed "welcome stranger" assessing, a practice inimical to the fundamental notion of equity in an ad valorem property tax. Furthermore, the remedy to which that court's decision relegates relatively overassessed taxpayers (appealing the assessments of relatively underassessed taxpayers) is unworkable, since it requires relatively overassessed taxpayers to bear the responsibility for auditing the assessment roll and monitoring sales and changes in assessments, when both of these functions can only be performed by the assessor, the county board of equalization, and the state tax commissioner.

IAAO believes that affirming the decision of the court below would jeopardize seventy years of legislative, administrative and judicial progress in improving the equity of the property tax. Therefore, IAAO urges this Court to reverse that decision, holding the "welcome stranger" system of assessment unconstitutional and directing that the Petitioners' property be reassessed at the prevailing level of assessment in the county.

SUMMARY OF ARGUMENT

We submit that the Supreme Court of Appeals of West Virginia erred in concluding that the Webster County Assessor's administrative policy, not sanctioned by legislation, of reassessing properties recently sold, based on a percentage of their selling prices, while not reassessing similar properties that had not been sold, did not amount to discriminatory assessment prohibited by the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. There is no rational basis for the policy. Although the price paid for property in an arm's-length transaction is relevant evidence of its true and actual value, this Court's decision in *Sunday Lake Iron Co. v. Township of Wakefield*, 247 U.S. 350 (1918), established that "intentional and systematic" undervaluation of other property in the same class contravenes the constitutional rights of one taxed upon the full value of his property. Furthermore, this Court's decisions in a line of cases, beginning with *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923), demonstrate that the Webster County Assessor's "welcome stranger" assessment policy constitutes the kind of "intentional and systematic" assessment discrimination that violates federal equal protection requirements (and state constitutional requirements having a similar scope). Accordingly, this Court should hold that, in ad valorem property tax administration, the practice of systematically assessing recently sold properties at a percentage of their selling price, while not reassessing similar properties that have not been recently sold, is a violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

We also submit that the court below erred in determining that the Petitioners in this case had no remedy for the relative overassessment of their property other than to seek an upward revision of assessments for relatively underassessed similar property. Such "remedies" are too expensive and time-consuming to be of any value to taxpayers. Therefore, this Court established, in the *Sioux City Bridge Co.* line of cases, that relatively overassessed taxpayers suffering from unconstitutional discrimination are entitled to have their assessments reduced to the percentage of true value at which others are taxed, even if their own property is assessed at true value in accordance with statutory law. We contend that the prevailing level of assessment in the same county is the proper level to which the Petitioners' assessments in the case at bar, and the assessments of similarly situated taxpayers, should be reduced. Consequently, this Court should hold that taxpayers subject to discriminatory assessments for ad valorem property tax purposes, including the Petitioners in the case at bar, should not be required to seek an increase in the assessments of relatively underassessed properties, but have a right to a reduction of their assessments to the prevailing level of assessment for similar property in the county.

ARGUMENT

1.

THIS COURT SHOULD HOLD THAT, IN AD VALOREM PROPERTY TAX ADMINISTRATION, THE PRACTICE OF SYSTEMATICALLY ASSESSING RECENTLY SOLD PROPERTIES AT A PERCENTAGE OF THEIR SELLING PRICES, WHILE NOT REASSESSING SIMILAR PROPERTIES THAT HAVE NOT BEEN RECENTLY SOLD, IS A VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

In this proceeding, involving the Petitioners' consolidated challenges to the valuations placed on their properties for ad valorem tax purposes by the Webster County Assessor, the Supreme Court of Appeals of West Virginia reversed a circuit court determination that the assessments in question violated Petitioners' state and federal constitutional rights, holding that the Assessor's practice of using recent deed values as the basis of appraising property subject to ad valorem taxation did not violate the equal and uniform taxation clause of Article X, Section 1 of the West Virginia Constitution (and, by extension, the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution). *In re 1975 Tax Assessments Against Oneida Coal Co., et al.*, 360 S.E.2d 560 (W.Va. 1987) (hereafter referred to as *Oneida Coal*). In reaching that decision, the state supreme court found that the Petitioners' properties were properly assessed based on their true and actual value,[1] and that the Peti-

[1] Until 1982, W.Va. Code §18-9A-11 allowed assessment of property at between 50 and 100 percent of its appraised value. But this statutory provision was struck down by the Supreme Court

(Footnote continued on following page)

tioners had failed to prove that undervaluation of other similar properties in Webster County was "intentional and systematic," a burden of proof that all taxpayers seeking relief from discriminatory assessments must meet, as established by a line of decisions of this Court, starting with *Sunday Lake Iron Company v. Township of Wakefield*, 247 U.S. 350 (1918).[2]

We believe the lower court made a compound error in its loosely worded decision. The West Virginia court seems not to have appreciated the *tax* consequences of the county's systematic practice of reassessing properties that happened to have been sold while not reassessing similar or surrounding properties ("welcome stranger" assessing, also referred to as "sales chasing" and "shot-

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[1] *continued*
of Appeals of West Virginia in *Killen v. Logan County Commission*, 295 S.E.2d 689 (W.Va. 1982). In 1981, W.Va. Code §18-9A-11 was amended to provide for assessed valuations at not less than 60 percent of appraised value, and W.Va. Const. Art. X, §1b was adopted the following year, requiring uniform state-wide assessments at 60 percent of market value. W.Va. Code §11-3-1 now establishes that all property shall be assessed annually at its "true and actual value," and W.Va. Code §11-3-24 requires a review and equalization of assessments annually by the county commission (though the County Commission of Webster County, in the present case, upheld the patently "unequal" assessments placed on the Petitioners' property).

[2] *See also Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441 (1923); *Southern Railway Co. v. Watts*, 260 U.S. 519 (1923); *Chicago G.W. Ry. v. Kendall*, 266 U.S. 94 (1924); *Cumberland Coal Co. v. Board of Revision*, 284 U.S. 23 (1931). *Chicago G.W. Ry. v. Kendall*, 266 U.S. 94, 100, contains a further reference to an "arbitrary and unconscionable" test, but that approach to determining whether assessment disparities amount to unconstitutional discrimination was not adopted by the court below—and properly so—although the "arbitrary and unconscionable" label certainly fits the inequities that resulted from the "welcome stranger" assessing in the present case.

gunning"), in the light of the West Virginia constitutional standard of uniform taxation and federal equal protection requirements. In addition, the state supreme court ignored contemporary standards in the field of property tax administration as well as the holdings of this Court.

Article X, Section 1 of the West Virginia Constitution provides that "[s]ubject to the exceptions in this section contained, *taxation* shall be equal and uniform throughout the State, and all property, both real and personal, shall be *taxed* in proportion to its value. . . ." (Emphasis added) In West Virginia, classes of property within tax districts are taxed at uniform *nominal* rates.[3] However, if assessments are not at a uniform proportion of *value*, *effective* tax rates will be unequal.[4] The *uniform use* of a flawed method of assessment will not result in uniform taxation, a principle that this Court recognized in *Cumberland Coal* [illegible]*v. Board of Revision*, 284 U.S. 23, 29-30

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[3] The nominal tax rate is the stated tax rate. It does not necessarily correspond to the effective tax rate, which is the tax rate expressed as a percentage of market value. The effective tax rate will be different from the nominal tax rate where the assessment ratio is not equal to 1. The assessment ratio is the fractional relationship an assessed value bears to the market value of the property in question.

[4] In the case of *In re Assessment of U.S. Steel*, 165 W.Va. 373, 268 S.E.2d 128 (1980), the Supreme Court of Appeals held that the steel company was the victim of improper discrimination in assessment because the assessor deliberately listed its property at a higher percentage of true and actual value than the percentage at which comparable properties were listed. But the assessor's deliberate use of different *nominal assessment rates* in that case had no greater effect on assessment equity, in terms of causing the effective tax rates for comparable property to differ, than the "welcome stranger" policy of Webster County in the present case.

(1931).[5] But the West Virginia court lost sight of that fact when it held, in its endorsement of "welcome stranger" assessing: "The uniform use of recent deed values as the basis for appraising property subject to ad valorem taxation does not violate W.Va. Const., art. X, §1." *Oneida Coal*, 360 S.E.2d 560, 564.

This Court has not addressed "welcome stranger" assessing, but several state courts have. While the Supreme Court of New Hampshire struck the practice down in *Duval v. City of Manchester*, 111 N.H. 375, 286 A.2d 612 (1971), the Supreme Court of Rhode Island skirted the issue of the practice's constitutionality in *Merlino v. Tax Assessors for Town of North Providence*, 114 R.I. 630, 337 A.2d 796, 802 (1975), by holding that plaintiffs had failed to provide sufficient evidence of disproportionate taxation, and the Supreme Court of California upheld the practice when it ruled Proposition 13 constitutional in *Amador Valley Joint Union High School District v. State Board of Equalization*, 22 Cal. 3d 232, 149 Cal. Rptr. 239, 583 P.2d 1281 (1978).

Proposition 13, which added Article XIII A to the California Constitution, required real property to be assessed on the basis of its acquisition value (in effect, legalizing "welcome stranger" assessing). The *Amador Valley* case can be distinguished from the present case, however, because the California court was ruling on a legislative initiative, for which the court (wrongly, we think) hypothesized a "rational basis" (namely, that certainty about one's

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[5] The *uniform* use of a flawed method of assessment has been recognized by other courts as resulting in nonuniform taxation. *See, e.g., Fisher-New Center Co. v. Michigan State Tax Commission*, 380 Mich. 340, 157 N.W.2d 271 (1968); *Sparks v. McCluskey*, 84 Ariz. 283, 327 P.2d 295 (1958).

future property tax burdens overrode traditional notions of equity, ability to pay or benefits received). In contrast, the West Virginia supreme court upheld an administrative practice not sanctioned by legislation.

Although the *Amador Valley* case can be distinguished from the present one, the effects of Proposition 13 in California illustrate the inequities that follow from "welcome stranger" assessing. In that regard, it might be noted that the estimated 1988 effective tax rate for residential properties in California that have not been sold since Proposition 13 was enacted in 1978 is less than 0.3 percent, whereas the effective tax rate for recently sold properties is 1.0 percent.[6]

Since "welcome stranger" assessing is rarely acknowledged by assessing officials, other conclusive empirical evidence of the assessment inequities that result from the practice is extremely difficult to come by. However, the following hypothetical example, based on reasonable assumptions about contemporary trends in real estate values, demonstrates the degree of inequities that can reasonably be assumed. In the example, virtually identical properties are assumed to have had a market value of $15,000 in 1963 and a market value of $87,000 in 1988. The assessor assesses each property on the basis of 50 percent of its most recent sale price. Property is taxed at a (nominal) rate of 4 percent of assessed value. The year in which each property was sold, its sale price, and data on as-

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[6] Break, *Proposition 13's Tenth Birthday: Occasion for Celebration or Lament?* (Unpublished paper presented at Lincoln Institute of Land Policy's Tax Policy Roundtable, April 28-30, 1988, Coronado, California), pp. 14-21.

sumed 1988 assessed values, property taxes, assessment ratios, and effective tax rates are presented below.[7]

Property	Year of Sale	Sale Price	Assessed Valued	Tax Bill	Assessment Ratio	Effective Tax Rate
1	1963	$15,000	$ 7,500	$ 300	9%	0.3%
2	1973	39,000	19,500	780	22	0.9
3	1983	68,000	34,000	1,360	39	1.6
4	1988	87,000	43,500	1,740	50	2.0

The data on effective tax rates in the illustration above demonstrate that the property assumed to have been sold in 1988 has an effective tax rate that is approximately six times the rate of the property assumed to have been last sold in 1963. The present case would seem to involve even greater inequities, however, as the trial court in this case found that the difference between the assessments in dispute and the assessments of similar properties that had not recently been sold was much greater than the difference assumed in our illustration above.

The effects of "welcome stranger" assessing may be viewed from another perspective: that of generally accepted standards of assessment uniformity. The most widely accepted index of assessment uniformity is the "coefficient of dispersion."[8] Coefficients of dispersion of 15 percent or less generally are regarded as indicative of satisfactory assessment performance for residential property, and coefficients of 20 percent or less are generally regarded as demonstrating satisfactory performance in assessing properties generally within a jurisdiction.

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[7] The assessment ratio of a property, in this instance, is the assessed value of the property divided by its estimated market value on the assessment date, which is assumed to be $87,000.

[8] The coefficient of dispersion is the average absolute deviation of a group of assessment ratios, taken around the median ratio and expressed as a percentage of that measure.

Data on coefficients of dispersion compiled by the U.S. Bureau of the Census during the quinquennial Census of Governments provide an indication of the effects on assessment performance of "welcome stranger" assessing in California under Proposition 13.[9] In 1976, the median coefficient of dispersion of the counties surveyed was 17.1, whereas by 1981, the comparable measure had risen to 28.2. In 1976, California ranked sixth among states nationwide in terms of this measure of assessment uniformity, but in 1981, California ranked thirty-third (West Virginia ranked forty-seventh and thirty-fourth in those years, respectively).

An increase in the coefficient of dispersion implies an increase in the average inequality of property tax burdens.[10] Again using data on California from the 1977 Census of Governments and the 1982 Census as an example, the *average* property tax mispayment in California increased 26 percent, from about $140 to about $190, even though the average effective tax rate decreased 59 percent, from

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[9] U.S. Bureau of the Census, *1977 Census of Governments*, vol. 2, *Taxable Property Values and Assessment-Sales Price Ratios* (Washington, D.C., 1978) and U.S. Bureau of the Census, *1982 Census of Governments*, vol. 2, *Taxable Property Values and Assessment/Sales Price Ratios* (Washington, D.C., 1984).

[10] Geraci and Plourde, "Benefits and Costs of Improved Property Tax Assessment," in International Association of Assessing Officers, *Analyzing Assessment Equity: Techniques for Measuring and Improving the Quality of Property Tax Administration* (Chicago, 1977).

1.7 percent to about 0.7 percent of market value.[11] As the earlier hypothetical example suggested, individual inequities can be much greater and will increase as time passes. Inequities with greater relative magnitudes can be expected in Webster County, West Virginia if this Court upholds the "welcome stranger" policies of the County Assessor.

It is for reasons such as those we have illustrated here that the International Association of Assessing Officers recommends in its policy statements that assessments should be based on current market values. The property tax is generally conceived to be an ad valorem tax, which means that a tax levy is apportioned among taxpayers according to the value of each taxpayer's property. In a dynamic economy, not only are revenue needs changing, but the values of property are also changing. While some values increase, others remain stagnant, and still others decline. It follows that as long as property values are changing, a uniform relationship between property values and property taxes can be attained only if current market

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[11] The assumptions and calculations upon which this illustration is based are:

Year	Average Property Value	Coefficient of Dispersion	Average Assessment Error (Col. 2 × Col. 3)	Effective Tax Rate	Average Mispayment (Col. 4 × Col. 5)
(1)	(2)	(3)	(4)	(5)	(6)
1976	$47,000	0.171	$8,100	0.017	$140
1981	100,600	0.282	28,400	0.007	280

Sources:

U.S. Bureau of the Census, *1977 and 1982 Censuses of Government*, vol. 2: column 2, tables 9 and 11, respectively; column 3, tables 16 and 18, respectively; and column 5, tables 20 and 22, respectively.

value is the basis for assessment, and current market value assessment clearly implies an annual assessment program.

An annual assessment program requires assessors to: consciously and continuously reevaluate the factors that affect value, express the interactions of those factors mathematically, use those mathematical expressions, which are referred to as mass appraisal models, and other mass appraisal techniques to estimate the values of properties, and repeat this process annually to maintain equitable assessments at statutory levels. Annual assessment does not require assessors to change all assessments each year, but it does require assessors to maintain the capability of changing each assessment each year if a change is warranted, and to maintain an effective program for periodically reinspecting properties.

For a variety of reasons, legal assessment standards may not conform to our recommendations, and contemporary standards view as marginally acceptable assessment programs that ensure intervals of no greater than four years between reappraisals of each and every taxable property in an assessment jurisdiction. Plainly unacceptable reappraisal practices, on the other hand, include unmaintained reappraisal systems, and reappraisals triggered only by an external activity affecting comparatively few properties, such as "welcome stranger" assessing.[12] The last general reappraisal in Webster County was completed in 1964.

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[12] International Association of Assessing Officers, *Improving Real Property Assessment: A Reference Manual* (Chicago, 1978), pp. 331-32.

In the present case, despite our belief that assessments should be based on current market values, we contend that the West Virginia supreme court erred in its application of a previous holding by the same court that "The price paid for property in an arm's-length transaction, while not conclusive, is relevant evidence of its true and actual value. . . ." *Kline v. McCloud*, 326 S.E.2d 715, 716 (W.Va. 1984). As a reflection of generally accepted *appraisal* practice, the court's holding in *Kline v. McCloud* is correct. However, proper appraisal of newly sold properties at a percentage of their true and actual value based, at least in part, on sales price must be accompanied by regular reassessment of other properties to prevent inequities.

The West Virginia supreme court also erred when it ruled that the county's assessment practices did not constitute "intentional and systematic" discrimination, as that ruling was contrary to several of this Court's previous decisions. In *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 447 (1923), this Court made it clear that the burden of proving variances in assessments are "intentional and systematic" requires only that a taxpayer show that a relative overassessment of his property does not result from "mere errors of judgment." Similarly, in *Cumberland Coal Co. v. Board of Revision*, 284 U.S. 23, 25 (1931), this Court condemned discriminatory action, like that in the present case, not involving "mere errors in judgment," but an assessment system that was "deliberately adopted," ignored "differences in actual values," and was "nonetheless systematic and intentional because of belief [by the county officials] in its validity."

In the decision below, the West Virginia supreme court stated that it was the "policy" of the Webster County Assessor's office to assess all recently transferred prop-

erty on the basis of 50 percent of deed values, and the court found that "this *method* was uniformly followed for all such property." *Oneida Coal*, 360 S.E.2d 560, 563. (Emphasis added) It is therefore incomprehensible, in light of this Court's previous rulings on the subject, that the lower court could find this "policy"—"methodically" applied by the Assessor—was not "intentional and systematic."

The present case is certainly not comparable to cases in which this Court has previously permitted assessment disparities to continue. It does not involve differences in assessment procedure for properties in different legislatively-created classes, like many of the cases cited by the Respondent in briefs filed with this Court.[13] Nor is it a futile quest by Petitioners for "precise, scientific uniformity" in assessment, like the taxpayers' case in *Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522, 527 (1959), but rather an attempt to remedy *gross* disparities in assessments within a single property class.

As support for its decision, the Supreme Court of Appeals of West Virginia cited its own statement in *Kline v. McCloud*, 326 S.E.2d 715, 720 (W.Va. 1984), that the court was dealing with a case "somewhat analogous to those situations where an assessor makes a partial reappraisal of property which results in such property receiving a higher value than other property, or there is disparate valuation between tax districts." But these situations are quite distinguishable from the present case, because the Webster County Assessor has not made an

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[13] *See Louis K. Liggett Co. v. Lee*, 288 U.S. 517 (1933); *Nashville, C. & St. L. Ry. v. Browning*, 310 U.S. 362 (1940); *Charleston Federal Savings & Loan Ass'n v. Alderson*, 324 U.S. 182 (1945); *Allied Stores of Ohio, Inc. v. Bowers*, 358 U.S. 522 (1959); *Lehnhausen v. Lake Shore Auto Parts Co.*, 410 U.S. 356 (1973)

"honest effort" to achieve equitable assessments over a reasonable period of time through partial, cyclical reassessment of all property in the jurisdiction. Instead, within one tax district, extreme assessment inequities have been allowed to persist for many years, and Webster County is following a "policy" of making them worse.[14]

Since the record is clear that the Webster County Assessor's practice of reassessing recently sold property on the basis of its sale price, while not reassessing similar unsold properties, was "intentional and systematic," and since the consequences of the practice in a changing market are obvious, and unexcused by any principles enunciated by this Court or any other, amicus IAAO respectfully submits that the Webster County Assessor's policy of "welcome stranger" assessing should be condemned by this Court as a violation of federal equal protection requirements.

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[14] Amicus does not regard the Webster County Assessor's periodic, arbitrary and de minimus increases in assessments for property not recently sold as being an acceptable attempt at removing assessment inequities in the county. Across-the-board percentage increases in assessments do not reduce inequities; they merely increase the tax base. Such increases are not the equivalent of an "honest effort" to eliminate discrimination. *See Sunday Lake Iron Company v. Township of Wakefield*, 247 U.S. 350, 353 (1918).

2.

THIS COURT SHOULD HOLD THAT TAXPAYERS SUBJECT TO DISCRIMINATORY ASSESSMENTS FOR AD VALOREM PROPERTY TAX PURPOSES SHOULD NOT BE REQUIRED TO SEEK AN INCREASE IN THE ASSESSMENTS OF RELATIVELY UNDERASSESSED PROPERTIES, BUT HAVE THE RIGHT TO A REDUCTION OF THEIR ASSESSMENTS TO THE PREVAILING LEVEL OF ASSESSMENT IN THE COUNTY.

While finding that no violation of equal protection requirements was involved in the present case, the Supreme Court of Appeals of West Virginia also held that, since the Petitioners' properties were assessed at true and actual value, Petitioners should have appealed to the county commission, sitting as the county board of equalization and review, to have other comparable properties' assessments raised to market as a remedy for the disparities in assessment that were clearly present in this case. *Oneida Coal*, 360 S.E.2d 560, 564-65. Amicus IAAO believes, however, that the lower court's decision to relegate the Petitioners to such a "remedy" fails to take into consideration the burdens it places upon taxpayers seeking to correct assessment inequities, and could only be reached through a process of deliberately ignoring this Court's previous rulings on appropriate remedies in assessment discrimination cases.

It has been a long-standing principle of this Court that a taxpayer, "though assessed at no more than full value for his property, may be unlawfully discriminated against by undervaluation of property of the same class belonging to others." *Southern Railway Co. v. Watts*, 260 U.S. 519, 526 (1923). Moreover, it is settled law in discrimination cases that because it is virtually impossible for a relatively overassessed taxpayer to have the value of all property within a jurisdiction raised to full value, the value

of the taxpayer's property may be reduced to achieve fairness. As the Court stated in *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 446 (1923):

> [t]he right of the taxpayer whose property alone is taxed at 100 percent of its true value is to have his assessment reduced to the percentage of that value at which others are taxed, even though this is a departure from the requirement of statute. The conclusion is based on the principle that where it is impossible to secure both the standards of true value, and uniformity and equality required by law, the latter requirement is to be preferred as the just and ultimate purpose of the law.

Admittedly, a relatively overassessed taxpayer cannot complain of discrimination if a state, acting on its own, raises other taxpayers' assessed values to the level of the overassessed taxpayer's property in an attempt to correct inequities, instead of lowering the overassessed taxpayer's assessment. But it is a violation of the U.S. Constitution if the state does not correct discriminatory valuation, instead requiring the taxpayer to do it himself. *Township of Hillsborough v. Cromwell*, 326 U.S. 620, 623 (1946); *Iowa-Des Moines National Bank v. Bennett*, 284 U.S. 239, 247 (1931).

The West Virginia supreme court, in the present case, has chosen to require the Petitioners to raise the assessed value of other taxpayers' property located in the same jurisdiction. "In the future," the court has said, "taxpayers who claim that they are being overassessed in relation to other taxpayers may not seek to have their assessments reduced as long as their property is valued at market value. Instead, they should seek to have the assessments of other taxpayers raised to market value." *Killen v. Logan County Commission*, 295 S.E.2d 689, 709 (W.Va. 1982). As justification for this position, the West Virginia court has noted that "any interested party" may seek the

suggested relief by filing for a writ of mandamus under W.Va. Code §11-3-25. *Tug Valley Recovery Center, Inc. v. Mingo County Commission*, 164 W.Va. 94, 261 S.E.2d 165 (1979).

The West Virginia court's position fails to consider, however, that the time and the cost to the taxpayer of making such an assessment appeal would prohibit any taxpayer from obtaining relief. If a taxpayer cannot get relief under the laws, his constitutional right to equal protection under the law has been violated. So, from the viewpoint of amicus IAAO, the West Virginia remedy, in essence, perpetuates unequal and nonuniform assessments.

The lower court's remedy would require the Petitioners, and even residential property owners who may suffer from comparable assessment inequities, to audit the *entire* assessment roll (there are approximately 8,800 parcels of real property in Webster County), and monitor *all* sales of real property and *all* changes in assessment, in order to prove their case before the county board of equalization and review. These would be functions of the assessor, the county board of review and the state tax commissioner in a standard assessment system, for they require the use of sophisticated assessment-ratio studies to evaluate the level and uniformity of assessments. Furthermore, even if the Petitioners were able to present sufficient evidence on the underassessment of other property, recent history in West Virginia concerning reassessments does not augur well for the Petitioners actually obtaining any relief from the county board of equalization and review.[15]

[15] Legislative and administrative responses to judicial attempts at compelling equitable assessment and taxation of property, in *Pauley v. Bailey*, Civil Action No. 75-1268 (Circuit Court of Kanawha County, West Virginia, May 1982) and *Killen v. Logan County Commission*, 295 S.E.2d 689 (W.Va. 1982), have been hostile, including a delay of the 1985 reappraisal.

For the foregoing reasons, we believe that this Court should hold that the assessments on the Petitioners' properties should be reduced to the prevailing level of assessment in the county for the years in question. There are two policy reasons for this recommendation: (1) reducing overassessed property to the prevailing level of assessment provides an incentive for the county to revalue underassessed property in order to maintain the tax base, and (2) burdens of proof are appropriately placed. The only burden a property owner should have to overcome is the presumption that her or his property is correctly assessed; a property owner should not be required to perform the role of an assessment review and equalization agency.

Although there are ample grounds for our recommendation that the prevailing level of assessment in the county is the level to which Petitioners' assessments should be reduced,[16] we recognize that there may be practical difficulties to overcome in applying that rule, since assessment-ratio studies to determine assessment levels have not been regularly conducted in West Virginia. U.S. Census of Governments data can be used, however, to approximate the prevailing level of assessment in the absence of better data, and this Court can compel Webster County, West Virginia to develop better data for use in the future. According to Census of Governments data, in 1976, the median assessment ratio for property with single-family (nonfarm) houses for the median area in West Virginia was 28.5 percent; in 1981, the comparable statistic was 21.0 percent.[17]

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[16] *See* Baar, *Property Tax Assessment Discrimination Against Low-Income Neighborhoods*, 1 Property Tax Journal 1, 22-24 (1982).

[17] U.S. Bureau of the Census, *1977 and 1982 Censuses of Governments*, vol. 2, tables 15 and 17, respectively.

CONCLUSION

We respectfully conclude that this Court should hold that assessing recently sold property at a percentage of its sale price while not reassessing similarly situated but unsold property, and requiring taxpayers subject to this practice to raise the assessments of other comparable property within a jurisdiction, is discriminatory and a direct violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. This Court should also reduce the Petitioners' assessments to the prevailing level of assessment in the county, because, as the dissent stated in *Oneida Coal*, 360 S.E.2d 560, 565, "the quest for true value [should not] override the *constitutional* requirement that taxation be equal and uniform."

Respectfully submitted,

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